

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRIAN MARTINEZ,

Petitioner,

-v.-

9:06-CV-0887
(DNH)(RFT)

SUSAN O'CONNELL, Superintendent,

Respondent.

APPEARANCES:

OF COUNSEL:

BRIAN MARTINEZ

Petitioner, *pro se*

99-B-0537

Oneida Correctional Facility

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Rome, New York 13340

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RANDOLPH F. TREECE, U.S. MAGISTRATE JUDGE

ORDER

By Order, filed January 22, 2007, this Court granted Respondent's Motion for a More Definite Statement.¹ Dkt. No. 6. Presently before the Court is Petitioner's Motion for Reconsideration of the January Order. *See* Dkt. No. 7.

A court may justifiably reconsider its previous ruling if: "(1) there is an intervening change in the controlling law; (2) new evidence not previously available comes to light; or (3) it becomes necessary to remedy a clear error of law or to prevent manifest injustice." *Delaney v. Selsky*, 899 F. Supp. 923, 925 (N.D.N.Y. 1995) (McAvoy, C.J.) (citing *Doe v. New York City Dep't of Soc. Servs.*, 709 F.2d 782, 789 (2d Cir. 1983)).

¹ Prior to the January Order, this Court extended Respondent's answer deadline until after the Motion for a More Definite Statement was decided. *See* Docket Entry, dated Dec. 18, 2006.

In support of his Motion for Reconsideration, Martinez asserts that preparing an amended Petition that complies with Rule 2 of the Rules Governing Habeas proceedings “would be time-consuming, redundant, and a burden and inconvenience[.]” Dkt. No. 7 at ¶ 6. Petitioner asserts that the Respondent should be compelled to adopt “the facts and law from the post conviction motions and all other briefs etc . . . , from the below state court proceedings.” *Id.* at ¶ 7. Respondent asserts that it is the burden of the Petitioner to properly plead his claims. Dkt. No. 9. However, Respondent does not oppose the grant of additional time for Petitioner to comply with the Court’s January Order. *Id.*

The Court is not persuaded that Petitioner should be relieved of his obligation to properly set forth his claims as well as the facts in support of such claims. Moreover, because Petitioner has not established any of the above-cited factors relative to his Motion for Reconsideration, his request is **denied**. Petitioner will be granted additional time to file his amended petition.

Accordingly, it is hereby

ORDERED, that Petitioner’s Motion for Reconsideration (Dkt. No. 7) is **denied**; and it is further

ORDERED, that Petitioner file his amended petition within **sixty (60) days** from the filing date of this Order; and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Date: March 28, 2007
Albany, New York



RANDOLPH F. TREECE
United States Magistrate Judge